

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ISAAC ADETAYO GRILLO, M.D.,

No. C 05-2559 SBA

Plaintiff.

**ORDER**

v.

[Docket Nos. 20, 21]

STATE OF CALIFORNIA, et al.,

Defendant.

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On June 22, 2005, Plaintiff Isaac Adetayo Grillo, M.D. ("Plaintiff") filed a complaint against the State of California, the California Department of Corrections (the "CDC"), the California Medical Board (the "CMB"), and William A. Norcross alleging the following causes of action: (1) "injunctive relief" to enforce a June 7, 2002 settlement agreement and for reinstatement of Plaintiff's job and license; (2) violations of 42 U.S.C. §§ 1983, 1985, 1986, and 1988; (3) wrongful termination in violation of public policy; (4) "conspiracy to deprive civil rights"; (5) defamation; (6) infliction of emotional distress; (7) tortious interference with existing and prospective business; and (8) fraud.

On July 12, 2005, the State and the CDC filed a Motion to Dismiss. On August 15, 2005, the CMB filed a Motion to Dismiss.

On September 22, 2005, the Court issued an Order granting the CMB's Motion to Dismiss and dismissing all of Plaintiff's claims against the CMB with prejudice. In the September 22, 2005 Order, the Court also granted the State and the CDC's Motion to Dismiss and dismissed Plaintiff's federal causes of action under 42 U.S.C. §§ 1983, 1985, 1986, 1988 with prejudice. Plaintiff's state law claims were also dismissed with prejudice. Plaintiff was granted leave to file an amended complaint against the State and the CDC on or before October 22, 2005, but was warned that he could only file such a complaint if he could allege, in *good faith*, facts sufficient to show that: (1) he has a cognizable federal

1 cause of action against the State and the CDC that is not barred by the Eleventh Amendment; and (2)  
2 he has not knowingly and voluntarily waived his right to assert the claims against the State and CDC.  
3 The Court expressly warned Plaintiff that failure to file an amended complaint in compliance with the  
4 Court's Order would be construed by the Court as evidence that further leave to amend would be futile.

5 By October 22, 2005, Plaintiff had failed to file an amended complaint. On October 28, 2005,  
6 the Court issued an Order dismissing Plaintiff's case with prejudice and closing the file. On that same  
7 day, Plaintiff filed a Motion to Withdraw Order Dismissing the Case [Docket No. 20]. On November  
8 7, 2005, Plaintiff filed a Motion for Leave to File a Belated First Amended Complaint and Motion for  
9 Relief from Judgment Under Rules 59(e) and 60 [Docket No. 21]. In Plaintiff's Motions, Plaintiff's  
10 counsel explains that he missed the filing deadline due to scheduling difficulties with his client.  
11 Plaintiff's counsel also states that he has worked diligently and in good faith to draft an amended  
12 complaint that complies with the Court's September 22, 2005 Order. Plaintiff seeks to have the Court  
13 set aside its judgment dismissing the case and requests leave to file a First Amended Complaint, which  
14 Plaintiff has attached to his Motion for Relief from Judgment.

15 For good cause showing,

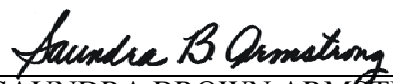
16 IT IS HEREBY ORDERED THAT Plaintiff's Motion to Withdraw Order Dismissing the Case  
17 [Docket No. 20] and Motion for Leave to File a Belated First Amended Complaint and Motion for Relief  
18 from Judgment Under Rules 59(e) and 60 [Docket No. 21] are GRANTED. The clerk is directed to  
19 restore the above-captioned matter to the active docket.

20 IT IS FURTHER ORDERED THAT Plaintiff is granted leave to file his First Amended  
21 Complaint. Plaintiff shall re-file the First Amended Complaint, which is attached as Exhibit 1 to  
22 Plaintiff's Motion for Relief from Judgment, no later than three (3) days following the date of this Order.

23 IT IS FURTHER ORDERED THAT Defendants shall respond to Plaintiff's First Amended  
24 Complaint no later than fifteen (15) days after the date Plaintiff's First Amended Complaint is filed.

25 IT IS SO ORDERED.

26  
27 Dated: 11/18/05

28  
  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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United States District Judge